

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 15, 2020 at 10:30 a.m.

1.	<u>20-24123</u>-E-11 <u>FWP</u>-10	RUSSELL LESTER Thomas Willoughby	MOTION TO EMPLOY GREEN FIELDS REAL ESTATE SERVICES, LLC AS BROKER(S) 9-24-20 [<u>163</u>]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 24, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Employ is granted.

Russell Wayne Lester ("Debtor in Possession") seeks to employ Curtis Stocking, a broker associate of Green Fields Real Estate Services, LLC ("Broker") pursuant to Local Bankruptcy Rule

9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to advise Dixon Ridge Farms Management regarding the marketing, listing, and sale of the real property and other properties.

Debtor in Possession argues that Broker's appointment and retention is necessary to sell the real property identified as 70.3 acres of real property with an organic walnut orchard in Yolo County, APN 050-100-015 and 050-100-032 ("Gordon Property"). The court summarizes the terms of employment as follows (the full terms are stated in the Agreement, Exhibit A, Dckt. 167):

- A. The listing price shall be \$2,500,000.00 for the property described as APN 050-100-015 and 050-100-032 (for a total of approximately 70.3 acres), located at County Road 89, Winters, California, 95694.
- B. Debtor agrees to pay to Broker 4.25% of the listing price as compensation for services. Commission shall be reduced to 4% if Broker also represents the Buyer.
- C. Debtor and Broker agree to mediate any dispute or claim regarding the obligation to pay compensation under this Agreement.
- D. The Listing Agreement between Debtor and Broker has an expiration date of March 31, 2021.

Curtis Stocking, a Broker of Green Fields Real Estate Services, LLC, testifies that he has been employed by Debtor in Possession to list the Gordon Property for sale; he is a licensed real estate broker that lists and sells acreage, farms, orchards, and vineyards as well as home, income-producing properties, and commercial real estate; and he is a disinterested person. Curtis Stocking testifies he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Curtis Stocking as Broker for the Chapter 11 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit 1, Dckt. 167. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final

allowance of fees for the professional.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Russell Wayne Lester (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor in Possession is authorized to employ Curtis Stocking as Broker for Debtor in Possession on the terms and conditions as set forth in the Listing Agreement filed as Exhibit 1, Dckt. 167.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~XXXXX~~, and the case is dismissed.

The Chapter 12 Trustee, Michael Meyer ("Trustee"), seeks dismissal of the case pursuant to 11 U.S.C. § 1208(c)(6) on the basis that: Debtor is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 30, 2020. Dckt. 189. Debtor states that the delinquency occurred due to COVID-19 and the current wildfires plaguing Northern California. Debtor also informs the court that despite the delays, Debtor has now commenced delivery of timber to the mills and should be receiving payments beginning October 20, 2020.

Debtor states that he is prepared to make a modified plan but preparation of the modified plan and related motion have been delayed due to the unavailability of Debtor's counsel as a result of a medical condition. Debtor anticipates filing the modified prior to the hearing on this motion to dismiss.

DISCUSSION

Debtor is \$72,533.66 delinquent in plan payments, having failed to make a \$20,000 payment due July 2020 and a \$52,533.66 due August 2020. Failure to make plan payments which is a material default by debtor with respect to a term of a confirmed plan that is cause to dismiss a case. 11 U.S.C. § 1208(c)(6).

At the hearing, ~~XXXXXXXX~~

~~Based on the foregoing, cause exists to dismiss this case. The Motion is ~~XXXXX~~, and the case is dismissed.~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 12 case filed by The Chapter 12 Trustee, Michael Meyer (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is ~~xxxxx, and the case is dismissed.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on August 31, 2020. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion to Redeem has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Redeem is XXXXX.</p>

Yuri Guillermo Garcia Funez and Nibia Lisett Alva Alva ("Debtor") seeks to redeem a 2001 Chevrolet Suburban ("Property") from the claim of Wheels Financial Group LLC dba 800 LoanMart ("Creditor") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722.

The right to redeem extends to the whole of the Property, not just to Debtor's exempt interest in it. *See H.R. Rep. No. 95-595*, at 381 (1977). To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Nibia Lisett Alva Alva. Debtor seeks to

value the Property at a replacement value of \$1,400.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the Property's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

While having the legal right to provide her own opinion as to value of a vehicle she owns, Debtor does not do so in her declaration, but appears to be merely repeating what somebody else believes, stating:

"I am informed and believe that on the date I filed my case, the Collateral was worth \$1,400."

Declaration, Dckt. 14, ¶ 4. This "testimony" does not appear to provide Debtor's own opinion, but a restatement of what she heard somebody say to her, and the Debtor is merely repeating that – not testifying as to her own opinion.

The lien perfected on the Property secures Creditor's claim with a balance of approximately \$3,491.00. Therefore, Creditor's claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor's secured claim to be in the amount of \$1,400.00.

Debtor has an additional challenge with respect to this Motion. Debtor has not claimed an exemption in the Property pursuant to California Code of Civil Procedure. As of this time, the Trustee has not abandoned the property pursuant to 11 U.S.C. § 554. Congress expressly provides in 11 U.S.C. § 722 (emphasis added):

§ 722. Redemption

An individual **debtor may**, whether or not the debtor has waived the right to **redeem** under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, **if such property is exempted** under section 522 of this title **or has been abandoned under section 554** of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption.

Because Debtor has failed to claim an exemption in the Property and the Property has not been abandoned by Trustee pursuant to 11 U.S.C. § 554 at the time of the filing of this Motion, the Debtor is not permitted to redeem the Property.

The court continues the matter to allow for Debtor to file a Motion to Compel Abandonment of the Property. At the hearing, the court continued the matter to **XXXXXX**.

~~The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.~~

The court shall issue an order in substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Redeem filed by Yuri Guillermo Garcia Funez and Nibia Lisett Alva Alva (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~granted, and Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2001 Chevrolet Suburban (“Property”) by paying Wheels Financial Group LLC dba 800 LoanMart, the creditor holding the claim secured by the Property, the total amount of \$1,400.00, in full at the time of redemption, which must be paid on or before November 14, 2020.~~

Local Rule 9014-1(f)(1) Motion– Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors holding the twenty largest unsecured claims, creditors, and parties requesting special notice on August 17, 2020. By the court’s calculation, 38 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days’ notice for written opposition).

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 or Dismiss the Case is granted, and the case is dismissed.

Review of the Motion

This Motion to Convert the Chapter 11 bankruptcy case of Alma Angelina Chavez-Nunez (“Debtor in Possession”) has been filed by the United States Trustee, Tracy Hope Davis (“U.S. Trustee / Movant”). Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. The instant case is the Debtor’s fifth bankruptcy case since 2012.
- B. The Debtor cannot comply with the Plan. Debtor has failed to file a Plan. Debtor would have to make monthly plan payments in the amount of \$27,000.00 for 60 months in order to address the filed priority tax claims which exceed \$1.6 million.

- C. Cause to dismiss also exists under 11 U.S.C. § 1112(b)(4)(F): The Debtor has failed to timely file the monthly operating reports for month January 2020 thru June 2020. Debtor has also failed to file the periodic report required for Tahoe Maintenance, Inc, a sole proprietorship owned by Debtor, which is not listed in Debtor's schedules.
- D. Cause to dismiss also exists under 11 U.S.C. § 1112(b)(4)(K): The Debtor owes \$2,286.39 in quarterly fees to the United States Trustee.

DEBTOR'S OPPOSITION

Debtor in Possession filed an Opposition on September 18, 2020. Dckt. 71. Debtor in Possession requests the motion be denied on the basis that she is now current with the operating reports; she has filed a motion to employ a tax attorney to assist her in reducing the IRS claim; and a mortgage loan modification has been filed that should allow more of her plan payments to be used towards taxes.

Moreover, Debtor in Possession contends that her financial situation has improved and that will allow her to make \$5,500 payments in a proposed Chapter 11 plan. Debtor in Possession's daughter is now financially independent; Debtor in Possession's mother has moved in with her and thus reducing elder care expenses; and Debtor in Possession's son is now living at home and working.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

Debtor in Possession testifies that her financial situation has improved which will allow her to make plan payments and provides a detailed account of said improvements. Although the Debtor asserts that she is now in a better financial situation, a review of the docket shows that Debtor in Possession has yet to file a Chapter 11 plan.

Certain concerns are still unaddressed by Debtor in Possession. Debtor in Possession does not explain how she will ensure that future operating reports will be filed on time. Further, the court is

unclear as to what a viable Chapter 11 plan would look like.

In reviewing the latest Monthly Operating Report (Dckt. 70) filed on September 18, 2020, for the month ending August 31, 2020, the Debtor in Possession reports that she has been required to spend every dime of income obtained during this case on expenses. She shows having a cash balance of only \$578.

It appears that Debtor in Possession has used this bankruptcy case, and prior cases, to maintain her “lifestyle” of choosing to provide for others rather than addressing her obligations - to creditors as a debtor and as the fiduciary Debtor in Possession.

In the Civil Minutes from the August 5, 2020 Continued Status Conference, the court addressed some very pointed issues for the fiduciary Debtor in Possession. These include:

No updated Status Report has been filed by the Debtor in Possession. On July 14, 2020, the Debtor in Possession filed the Monthly Operating Reports for March 2020 (Dckt. 51), February 2020, (Dckt. 50), and January 2020 (Dckt. 49). The March report was due no later than April 14, 2020, the February report was due no later than March 14, 2020, and the January 2020 report was due no later than February 14, 2020. L.B.R. 2015-1. These reports were 3 months, 4 months, and 5 months delinquent, respectively. Dckts. 51, 50, 49.

The Debtor in Possession, the fiduciary of the bankruptcy estate, did not fare better for the December 2019 Monthly Operating Report, which was not filed until April 22, 2020 - three months delinquent. Dckt. 47. (An earlier Monthly Operating Report for December 2019 was filed on February 11, 2020, one month delinquent. Dckt. 42.)

The November 2019 Monthly Operating Report was not filed until February 11, 2020, which was two months delinquent. Dckt. 41.

The continuing defaults demonstrate that the Debtor does not have the ability to serve as a debtor in possession. The Docket is devoid of any action being taken by the Debtor in Possession to prosecute this case. Rather, it is a placid, static lake of nothing being done, except monthly operating reports being delinquently filed on the eve of Status Conferences.

...

However, on Schedule A/B Debtor states under penalty of perjury that she does not own any interests in any incorporated or unincorporated businesses, or any interests in an LLC, partnership, or joint venture. Schedule A/B Question 19, Dckt. 19 at 10; Amended Schedule A/B Question 19, Dckt. 32 at 6.

Conflicting with this is information on the Petition where Debtor states under penalty of perjury that she is a “sole proprietorship of a business with the name Tahoe Maintenance, Inc.” Petition, Question 12; Dckt. 1 at 4.

Looking at the Monthly Operating Report for March 2020, Debtor’s

wage income was \$20,827, but her personal expenses were (\$27,972). How Debtor has (\$27,972) in personal expenses is not explained. But as in prior months, there are numerous transfers to Daniel Nunez, Carman Garcia, Victor Nunez and Karina Nunez.

...

During this case, the Debtor in Possession has not filed any Status Reports. Due to the benign acting creditors, the Debtor in Possession has managed to exist during this case to pay her personal expenses, and apparently take no steps to reorganize (at least what Debtor in Possession would have been willing to tell the court and parties in interest in a Status Report).

Dckt. 55.

Debtor now purports to have a surplus of \$5,500.00 a month. Opposition, Dckt. 71. This is argued by counsel to be because Debtor's daughter has graduated from college and Debtor's mother has moved in and reduced her "elder care expense." In her declaration, Debtor directs the court to a Supplemental Schedule J showing how her expenses have been reduced. Dckt. 72.

Debtor now lists (\$6,415.77) in expenses, including \$900 for her adult child's (25 year old) education expense and \$500 for elder care. The significant changes that Debtor shows between the prior Schedule J and the Supplemental Schedule J to provide for a \$3,601 reduction in expenses include:

Supplemental Schedule J, Dckt. 68	Expense	Amended Schedule J, Dckt. 43
\$0.00	Health Insurance	(\$1,100.00)
(\$900.00)	Children Education Related	(\$2,700.00)
(\$500.00)	Elder Care	(\$1,200.00)

Debtor does not explain how she no longer has any healthcare expense.

In looking at this case, it appears that what the Debtor is telling the court is that since October 1, 2019, when this case was filed, she has chosen to divert at least \$43,212 to provide for adult family members, maintain her lifestyle, and not prosecute a plan in this case. The number appears to be actually higher, as there is still \$1,400.00 a month being used to pay for Debtor's son's education and "elder care expenses" rather than providing for paying creditors.

Debtor having now had a year to prosecute her Chapter 11 case, coming in and saying that there will be some plan in the future, and now, after a year in the case she wants to begin addressing the substantial tax claims, it is too late. Debtor, serving as the fiduciary Debtor in Possession, has not prosecuted this case and has not presented the court with sufficient evidence that she can prosecute the case. Rather, the evidence presented demonstrates that Debtor will use monies of the estate to pay "favored expenses" for "favored dependants," over confirming and performing a plan.

Other than the U.S. Trustee who is now seeking to dismiss this case due to lack of prosecution, there have been no creditors doing anything to interfere with the Debtor/Debtor in Possession diligently prosecuting a plan. As of October 14, 2020, more than a year into this case, no proposed plan and disclosure statement have been filed by the Debtor/Debtor in Possession.

It appears that the only impediment to Debtor in Possession prosecuting a plan was Debtor desiring to use the money for other purposes.

The court also notes that when this case was filed on October 1, 2019, the Debtor in Possession immediately moved for the court to extend the automatic stay (having had the prior Chapter 13 case dismissed due to being significantly delinquent in plan payments, failing to attend the First Meeting of Creditors and then the Continued Meeting of Creditors, and being grossly over the 11 U.S.C. § 109(e) debt limits.) 19-23023; Civil Minutes, Dckt. 46.

In the Motion to Extend the Stay, filed on October 10, 2019, the Debtor in Possession expressly represented to the court, upon which the court relied, the following:

4. Debtor will apply to employ a tax specialist to assist her in this case. Her business income has increased and is more consistent

Motion, Dckt. 14. Then, in her Declaration in support of the Motion to Extend the Automatic Stay, Debtor in Possession testified:

3. I had filed a prior Chapter 13, case number 2016-27511. I allowed it to be dismissed to allow a tax attorney attempt to deal with IRS outside of bankruptcy. The prior two (2) cases, cases 2012-36716 ad 2012-30124 were dismissed because we were not able to satisfy the Chapter 13 trustee's requirements.

...

5. I am also planning to file an Application to Employ a Tax Attorney as the IRS claim is the most complicated and problematic part of the case. This should be done by October 18, 2019. With that attorney's help, I believe I can reduce the IRS secured and priority claim to an amount I can pay off within 5 years of the filing date.

Declaration, Dckt. 16. Again, the court relied on this testimony under penalty of perjury in extending the automatic stay.

Though expressly stating that by mid-October 2019 the tax attorney would be employed and the tax issues diligently addressed (the court presuming Debtor in Possession would fulfill her obligations under the Bankruptcy Code), the Debtor in Possession took no action to attempt to employ tax counsel until a motion was filed on September 18, 2020, exactly eleven (11) months after what she had testified to a year earlier. It appears that the only thing that prompted this action was the U.S. Trustee filing this Motion to Dismiss on August 15, 2020 and the hearing on that Motion being set for September 24, 2020.

Debtor in Possession has over the past eight years filed and had dismissed four prior cases. Debtor has done nothing in this case to cause the court to determine that she can prosecute this case. Rather, she continues to demonstrate an inability to prosecute a Chapter 11 case. Cause exists to dismiss

this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert the Chapter 11 Case or Dismiss the Case filed by the United States Trustee, Tracy Hope Davis (“U.S. Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and this case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on September 18, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Employ is denied.
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Alma Angelina Chavez-Nunez ("Debtor in Possession") seeks to employ Todd Luoma ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel to handle tax issues in the current bankruptcy proceeding.

Debtor in Possession argues that Counsel's appointment and retention is necessary to handle the complicated tax issues in this case, particularly since the IRS is claiming \$6 million owed in taxes. The court summarizes the terms of employment as follows (the full terms are stated in the Agreement, Exhibit 1, Dckt. 66):

- A. Representation includes a dispute with the Internal Revenue Service. An objection to their Proof of Claim has been filed with this court.
- B. The Firm's fees are based on an hourly rate with Betty J. Williams,

Attorney at \$535.00 per hour, R. Todd Luoma, Attorney at \$500.00 per hour, Anita Falk, attorney at \$475.00 per hour, James Bourbeau, Attorney at \$470.00 per hour, Michael Pearson, Attorney at \$465.00 per hour, Paralegals at \$345.00 per hour, and Legal Assistants at \$245.00 per hour.

- C. Debtor will be provided with interim statements on a monthly basis. Once approved by the court, payment will be due upon notice from the court.
- D. The Firm requests a deposit of \$10,000.00 from the Debtor.
- E. Once services conclude, all unpaid charges for fees or costs shall be due and payable immediately.
- F. Debtor and the Firm have the right to terminate representation at any time. The Firm has the right to terminate representation at any time, subject to an obligation to give Debtor reasonable notice to arrange for alternative representation.

Todd Luoma, an Attorney of Law Office of Williams & Associates, testifies that he has been employed by Debtor in Possession to resolve the IRS and Franchise Tax Board claims in this bankruptcy case; he is a disinterested person; and there are no arrangements between the Firm and any other person for the sharing of fees. Todd Luoma testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

However, the court has by separate order dismissed this case. The case being dismissed, the employment is not authorized.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Alma Angelina Chavez-Nunez ("Debtor

in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is denied.

6. [20-20175-E-11](#) **HERBERT MILLER** **MOTION FOR CONTEMPT AND/OR**
[ARF-1](#) **Judson Henry** **MOTION FOR SANCTIONS**
6 thru 12 **9-11-20 [146]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Cameron Miller, Chapter 11 Trustee, and Office of the United States Trustee on September 11, 2020. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

The Motion for Sanctions for Violation of the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion for Sanctions for Violation of the Automatic Stay is granted.</p>
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The present Motion for Sanctions for failing to appear at a Rule 2004 Examination and for damages and the inherent power of this court has been filed by the Law Offices of Allan R. Frumkin (“Movant”). The claims are asserted against Cameron Miller (“Respondent”).

Sanction Powers of A Bankruptcy Judge

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and

parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

REVIEW OF MOTION

In asserting this claim Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

- A. Creditor obtained an order from this court granting a Rule 2004 examination of Cameron Miller, to which Miller failed to appear. Debtor had testified that he was employed by Windsor Diamond Jewelers, which is owned by Miller who is Debtor's son.
- B. Miller's unlawful failure to appear caused Creditor to incur unnecessary time, effort, and expenses in attempting to gather information as provided for under the Bankruptcy Code.
- C. Creditor alleges Miller is liable to Creditor for actual damages, attorney's fees, and costs for his violation of FRBP 2004(a).
- D. Creditor requests \$350.00 in actual damages, \$1,400 in attorney's fees, a court order for Miller to appear at a later examination, and that Creditor may recover against Miller sanctions in an amount to be determined for the court.

Review of Evidence

Movant has provided the Declaration of Allan R. Frumkin in support of the Motion. Dckt. 148. The Declaration provides that Frumkin has personal knowledge and would be willing to testify regarding to facts identical to those stated in the motion.

Provided as Exhibit B is a copy of the certificates of service of the Rule 2004 Examination

Order and the Subpoena for the attendance of Mr. Cameron Miller. Dckt. 149.

Exhibit C, Dckt. 149, is a transcript of the August 27, 2020 scheduled 2004 Examination. In the transcript Alan Frumkin, the Movant, is quoted as stating that Herbert Miller, the Debtor, called the afternoon before to advise Mr. Frumkin that Cameron Miller would not be at the 2004 Examination due to “some covid-19 exposure.” Exhibit C, p. 3:4-7; Dckt. 149. Mr. Frumkin also testifies to this in his Declaration, ¶ 9, Dckt. 148.

RESPONDENT’S AFFIDAVIT

Respondent filed an Affidavit on September 30, 2020. Dckt. 168. Respondent opposes the Motion on the following grounds:

- A. Respondent states he did not attend the examination with Mr. Frumkin’s office because he had self-quarantined for 14 days due to exposure to the COVID-19 virus.
- B. Respondent states he had his father, Debtor, call Movant to reschedule or conduct the meeting through Zoom but no communication in response was received.
- C. Respondent states he intends to be on the call for the October 15 hearing.
- D. Respondent states he has decided to close Windsor Diamonds due to the economic downturn and COVID-19. As a result, Debtor will no longer be employed by Windsor Diamonds Inc. or Finley and Diamond Inc. Store. The store was closed on September 15, 2020.

DISCUSSION

Mr. Cameron Miller states that he asked his father to call and reschedule his examination. This was not for his father to do. His father is not Cameron Miller’s attorney. The responsibility lies with Mr. Cameron Miller. By not appearing and failing to take actions that would have avoided the problem at hand, Mr. Miller wasted Movant’s time.

Cameron Miller took no action to seek a continuance of the 2004 Examination, has not documented any requests to reschedule the 2004 Examination (other than to say that he asked his father call to try and do so), or any attempt to address his purported inability to appear in compliance with the 2004 Examination subpoena. Rather, he states in his Affidavit that after having only asked his father to call and try to reschedule, he passively waited “but have not received anything yet.” Declaration, ¶ 3; Dckt. 168.

No evidence is presented by Cameron Miller of any action actually taken by his father. Mr. Frumkin testifies that he had a phone message from Cameron Miller’s father the night before the 2004 Examination that Cameron Miller would not be at the 2004 Examination, and that there was no further attempt by Cameron Miller, either directly or by his father, the Debtor, to reschedule the 2004 Examination and address Cameron Miller’s failure to appear.

The present Motion was filed on September 11, 2020. That is approximately two weeks after the August 27, 2020 scheduled 2004 Examination. That afforded Cameron Miller more than sufficient time to address his failure to appear, agree to a rescheduled date and time, and avoid Mr. Frumkin having to bring this Motion.

From Cameron Miller's Affidavit, the court concludes that having not appeared and having asked his father, the Debtor, to make a call, Cameron Miller elected to not address his failure to appear. Unfortunately, his failure to act has resulted in the present Motion and Mr. Frumkin's client having to incur this expense.

The requested amount of corrective sanctions in the amount of \$350.00 for the cost of the court reporter are reasonable. That is a necessary cost and expense.

The attorney's fees requested are \$1,400.00. The evidence presented for those fees consists of the Declaration of Allan Frumkin. Dckt. 148. No billing records are provided, but Mr. Frumkin provides the following testimony:

12. My hourly rate is \$350.00 per hour and Creditor estimates the time incurred for appearing at the Examination in which Miller did not appear, the preparation and filing of this motion as well as the subsequent hearing to be approximately four hours.

Declaration, ¶ 12; Dckt. 148.

Given the limited scope of events, the court can properly evaluate the reasonable attorney's fees in connection with the 2004 Examination, the filing of this Motion, and the hearing. The court determines that the amount of the reasonable attorney's fees to be:

1 hour for the 2004 Examination at which Cameron Miller did not appear.

1 hour for preparation of the present Motion and supporting pleadings.

1 hour for preparation and attending the October 15, 2020 Hearing.

Therefore, the court also awards the amount of \$1,050.00 in corrective, compensatory sanctions, computed as 3 hours time Mr. Frumkin's \$350.00 an hour billing rate. An hourly rate for an attorney of Mr. Frumkin's experience (the court noting that Mr. Frumkin's State Bar Number is 50543, which indicates an attorney with four decades of experience) as demonstrated by the pleadings filed in this case of \$350.00 an hour is reasonable in the Sacramento Region for a case of this nature.

Thus, the court finds Mr. Cameron Miller in contempt, and awards corrective sanctions to compensate Movant for the monetary damages caused by Cameron Miller's failure to appear and failure to take action to remedy his failure to appear in the amount of \$1,400.00 are awarded to Movant.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Sanctions by the Law Offices of Allan R. Frumkin, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted for the Law Offices of Allan R. Frumkin, Inc. and against Cameron Miller in the amount of \$1,400.00 as corrective sanctions.

This Order for \$1,400.00 in corrective sanctions against Cameron Miller constitutes and may be enforced as a judgment in this court. Fed. R. Civ. P. 54; Fed. R. Bankr. P. 7054, 9014(b).

7. <u>20-20175-E-11</u> HERBERT MILLER <u>UST-1</u> Judson Henry	CONTINUED MOTION TO DISMISS CASE AND/OR MOTION FOR IMPOSITION OF A ONE-YEAR BAR AGAINST THE FILING OF A NEW CASE 7-28-20 [108]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in possession, Debtor in possession’s Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice on July 28, 2020. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss the Case is granted.

The United States Trustee, Tracy Hope Davis (“U.S. Trustee”), filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. § 1112(b)(1) and the imposition of a one-year bar against filing a new case pursuant to 11 U.S.C. § 349(a).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. U.S. Trustee states she has established cause to dismiss this chapter 11 case because Debtor appears to have filed the case in bad faith under the totality of the circumstances, due to inaccurate and misleading schedules and statements, serial filings and dismissals, and egregious behavior. *See In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (citing *In re Welsh*, 711 F.3d 1120, 1129 n.45 (9th Cir. 2013) and *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999)).
2. U.S. Trustee states Debtor is a serial filer of bankruptcy with twelve prior bankruptcy cases filed by Debtor or entities owned by Debtor since 2009, ten of which were dismissed with no confirmed plan.
3. U.S. Trustee states Debtor failed to accurately disclose income or expenses, implicating bad faith acting. *See In re Cortez*, 349 B.R. 608, 614-15 (Bankr. N.D. Cal. 2006). Debtor stated he owned three real properties on his amended Schedule A/B. He also stated on his amended Schedule J that he pays insurance on these properties. However, at the Meeting of Creditors, Debtor admitted that they were each foreclosed in 2018 and he does not have insurance on the properties.

U.S. Trustee states Debtor did not disclose any interest or connection to two separate companies (Hillside Holdings, Inc. or M. D. & A. Holding Company, Inc.) on his amended Schedule A/B or amended Statement of Financial Affairs despite claiming to be CEO of the entities in 2018 bankruptcy case filings. Debtor did not disclose any interest or connection to Finley and Diamond, Inc. on his amended Schedule A/B or amended Statement of Financial Affairs. Debtor claims his son owns the entity and he is a “manager-jeweler” and “independent jewelry contractor” for the company. However, documents obtained from the California Secretary of State indicate Debtor is an officer and director of the entity.

Debtor has claimed monthly income of \$8,500 on his amended Schedule I for the instant case, yet his total income in 2019 was \$14,000.

U.S. Trustee states Debtor did not budget any amounts on his amended Schedule J for rent or home mortgage payments, or secured payments on his two vehicles.

4. At the Meeting of Creditors, Debtor testified that real estate business was premised upon locating distressed properties and attempting to obtain concessions from the mortgage holders, by challenging the validity of the related deeds of trust and assignments.

Debtor further admitted that Debtor’s business entities filed for bankruptcy merely for the purpose of “get[ting] them on their

automatic stay for that the banks would have to prove how they became a creditor or got it and what they paid for it.”

5. U.S. Trustee states Debtor’s pre- and post-petition conduct constitutes egregious behavior, indicating bad faith acting. *See In re Luxford*, 368 B.R. 63, 74 (Bankr. D. Mont. 2007). Debtor’s testimony at the 341 Meeting and his serial filing of unproductive bankruptcy cases indicate Debtor is using bankruptcy as a tool in negotiations with mortgage holders. In addition, Debtor has failed to pay quarterly fees of \$651.10 for first quarter of 2020.
6. Dismissal of the case is in the best interest of the creditors because Debtor has used bankruptcy in bad faith to avoid foreclosure to the detriment of secured creditors with liens on mortgage properties.
7. Additionally, U.S. Trustee requests the court impose a one-year bar against the Debtor’s filing of a new bankruptcy case, pursuant to 11 U.S.C. § 349(a) on the basis that under the totality of the circumstances, Debtor has acted in bad faith.

Motion, Dckt. 108.

U.S. Trustee filed the Declaration of Carla K. Cordero, U.S. Trustee’s Bankruptcy Auditor/Analyst, to provide testimony to properly authenticate the various exhibits presented by the U.S. Trustee in support of the factual grounds asserted. Declaration, Dckt. 110.

Debtor-in-Possession’s Opposition

On August 20, 2020, Debtor-in-Possession (“DIP”) filed an Opposition. Dckt. 126. Debtor in Possession asserts the following:

- A. DIP argues that U.S. Trustee failed to assert grounds, facts, or legal authority in support of the dismissal, as required by 11 U.S.C. 1112(b). The *In re Leavitt* case cited by the U.S. Trustee states a rule regarding bad faith as cause for dismissal specifically under chapter 13 cases. 171 F.3d 1219, 1224 (9th Cir. 1999). *In re Welsh*, also cited by the U.S. Trustee, considers dismissal for bad faith in a chapter 13 case as well. 711 F.3d 1120, 1122 (9th Cir. 2013). While the U.S. Trustee cites *In re Prometheus Health Imaging, Inc.* in order to apply the totality of the circumstances test to a chapter 11 case, the opinion of that case states that it is not appropriate for publication and has “no precedential value.” 2015 WL 6719804. Therefore, the U.S. Trustee has not provided a legal basis for the relief it requests.
- B. DIP further argues the facts of the case do not demonstrate bad faith. Debtor asserts that the instant case is in essence nothing more than an extension of two of the most recent prior cases he has filed as an individual, in that the claims, assets, and issues are essentially the same.

Regarding the eight bankruptcy cases filed as entities, DIP asserts that he was not involved in causing the commencement of three of them. DIP states that of the remaining five, three of them relating to Abacus Investment Group are essentially one case, which is why they were all from 2017. DIP further states that he does not recall causing the filing of the case with Hillside Holdings, Inc. but he may have. He asserts that this case and the case with M D & A Holding Company, Inc. were both in attempts to reorganize the same condominium property in Las Vegas, Nevada. DIP claims these business cases were most likely filed by third parties and did not authorize the filings or his signature on said filings. Therefore, DIP argues his conduct does not constitute that of a serial filer and he has not acted in bad faith.

- C. DIP argues that his schedules and statements of financial affairs were not incomplete or inaccurate. DIP states that the discrepancy of his income for 2019 was based on Debtor's income limited to Social Security. Where as Debtor's projected income includes Social Security, monthly take home pay and net income from rental property/operating a business. DIP then adds that the discrepancy and changes in expenses are due to the outbreak of COVID-19. DIP then asserts that U.S. Trustee is aware of this as it has been previously discussed in various status conferences.

DIP contends that the U.S. Trustee cannot assert he does not own three of the properties listed on his schedule because two of them are currently the subject of adversary proceedings regarding title. DIP also states that he truthfully believed the properties had insurance placed on them but only later learned insurance companies would not place insurance on properties due to DIP not being on title per the recorder's office. DIP adds that the U.S. Trustee is aware of the adversary proceedings.

DIP asserts that his schedule and statements of financial affairs did not disclose his connection to Finley and Diamond, Inc because this did not come into existence until February 2020, after his petition date. In addition, DIP states that as a director, he does not now and did not pre-petition have an ownership interest in the company.

- D. Lastly, DIP states that he has paid his fees from the first quarter of 2020.

DISCUSSION

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

In reviewing the file in this Chapter 11 case, the court has a fundamental question for Counsel for the Chapter 11 Debtor in Possession - what is going to be the plan of reorganization in this case? In response, counsel for the Debtor in Possession explained that the Debtor's ability to generate revenue increased starting in August 2020, that it would be reflected in the Monthly Operating Report, and that the proposed plan will include blocked account adequate protection payments in lieu of a bond if the Debtor is using the bankruptcy case in the place of a preliminary injunction. The court expects the payments to begin in September 2020, with the amount being equal to what the monthly mortgage payment would be.

October 15, 2020 Hearing

A review of the docket reflects that Debtor in Possession has filed two operating reports. Debtor has also filed a Chapter 11 Reorganization Plan, premised on the September monthly report. The report states Debtor has an income of approximately \$35,052. This income is based on Social Security, "jewelry shop mgt/in. Sales (CV-19; minimal)," and One-time commission income.

The court also has an Affidavit by Cameron Miller, Debtor in Possession's son. Dckt. 168. In this Affidavit, DIP's son certifies and affirms under penalty of perjury the following:

6. Due to the Covid19 Virus and the economic downturn to all business I have decide [sic] to close Windsor Diamonds at this time and my Father Herb Miller, Liz Kawata, and David Preston are no longer employed by Windsor Diamonds Inc. or Finley and Diamond Inc. Store was closed on 9/15/2020 and keys given back to Lawrence Properties, for our unit located at 618 E Bidwell Street Folsom, Ca. 95630, as per there [sic] request.

Affidavit, Dckt. 168, ¶ 6.

Looking at the Debtor in Possession's most recent Monthly Operating Report for September 2020, he lists having total "cash receipts" of \$20,875 for the month. Dckt. 179 at 8. Of this, \$3,500 is from Windsor Diamonds, which is now out of business. Thus, Debtor's gross monthly cash receipts drops to \$17,375.00.

Most of Debtor's current income is stated to be from "Independent sales commissions earned," which for September 2020 are stated to be \$16,000. *Id.* The only other income is Social Security benefits of \$1,375.

What is not included on Debtor's Schedules J (Dckt. 22), Amended Schedule J (Dckt. 37), or the September 2020 Monthly Operating Report are Federal or State Self-Employment Taxes or Income Taxes. Assuming that Debtor has only \$3,424 in business expenses (which he states include the

“bankruptcy installments”), which appears to represent a 78.6% profit margin), he has at least \$12,500 a month in net income after his business expenses. That is annual net income of \$150,000 for this single individual.

However, Debtor does not provide for the payment of any Federal or State Self-Employment Taxes or Income Taxes for the nine months of this bankruptcy case from its January 13, 2020 filing to the Monthly Operating Report for September 2020. See Cumulative (Case to Date) column of September 2020 Monthly Operating Report; Dckt. 179.

Review of Proposed Plan Filed

The Reorganization Plan raises several red flags. Debtor in Possession seeks to confirm a plan which modifies the interest of unidentified creditors without their participation or consent. Under Class 2 of the Plan, DIP seeks to modify the claim of the creditor for real property commonly known as 11155 Shadow Court, Auburn, California, Debtor’s primary residence. The loan for a debtor’s primary residence cannot be modified, and any such modification violates § 1123(b)(5) - absent the consent of that creditor, which cannot be obtained because the creditor is unidentified.

Additionally, under Class 1b of the Plan, Debtor in Possession seeks to modify the claim secured by real property commonly known as 305 Hilton Drive, Applegate, California. DIP states that this secured claim is held “by an unknown Creditor.” Debtor in Possession also seeks to modify the claim secured by real property commonly known as 11356 Alta Mesa East Road, Wilton, California. DIP states that this secured claim is held “by an unknown Creditor.” As to the identity for these secured creditors, Debtor states that these will be “determined upon final judgment of adversary case no. 20-02115” as it pertains to the Hilton Drive property, and “determined upon final judgment of the anticipated adversary” for the Alta Mesa Road property. The court cannot proceed to confirm a plan with unidentified creditors that are not given the opportunity to participate and be heard. This is an issue of due process.

Related Litigation

It seems that in effect the plan is a straw-man plan, with there being unidentified creditors whose claims are being modified, without consent for the primary residence, as a device to circumvent the requirements for obtaining a preliminary injunction in the adversary proceedings where the real battles lie.

The court notes that Debtor is bringing adversary proceedings with respect to only two of the properties for which it is alleged that the creditor is “unknown.” The plan includes a third “unknown creditor” for whom no action is being taken.

Class 3.1a. has the “unknown creditor” with the secured claim on the 305 Hilton Drive Property. Plan, Dckt. 185. That property is the subject of Adversary Proceeding 20-0115 in which JPMorgan Chase Bank, N.A., Caliber Home Loans, Inc., U.S. Bank Trust, N.A., as Trustee, MTC Financial, Inc., and Trustee Corps are named as Defendants.

Class 3.1b. has an “unknown creditor” with a secured claim on the 11356 Alta Masa East Road, Wilton, California Property. *Id.* No adversary proceeding has been commenced to determine who this “unknown creditor” is.

Class 3.2 has an “unknown creditor” with a claim secured by the 11155 Shadow Court, Auburn, California Property. *Id.* That property is the Debtor’s residence. Petition, Question 6; Dckt. 1; Amended Petition, Question 5; Dckt. 37. The treatment of this claim is to modify the terms of the loan, have the court determine the amount of the claim, and then repay it over 30 years at 4.25%. Absent the consent of the “unknown creditor,” such modification is not possible under the Bankruptcy Code and such a plan term could not be confirmed absent such consent. 11 U.S.C. § 1123(b)(5), which provides (emphasis added):

(b) Subject to subsection (a) of this section, a plan may—

...

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; . . .

Thus, in addition to ignoring one of the “unknown creditors,” there is no confirmable plan to be prosecuted in this case. Rather, the “plan” appears to be merely a charade for purposes of using 28 U.S.C. § 1334 to obtain federal court jurisdiction.

Though being in bankruptcy since January 13, 2020, Debtor does not appear to have taken any action to avail himself of “identifying” these unknown creditors using the discovery tools provided in Federal Rule of Bankruptcy Procedure 2004. The two Adversary Proceedings were filed in June and August 2020, six and eight months after the case was commenced.

The court has been faced with similar “who is the creditor” and “where is the deed of trust” situations previously. Both well established California law and Ninth Circuit case law clearly show how such an issue is clearly determined.

In 2011 the Ninth Circuit Court of Appeals addressed this note-deed of trust issue in *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, 9th Cir. 2011). The court addressed the general proposition that notes and deeds of trust remain together as a matter of law, with it being the right of the note owner to exercise the power under the deed of trust.

It is well-established law in California that a deed of trust does not have an identity separate and apart from the note it secures. "The note and the mortgage are inseparable; the former as essential, the later as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); accord *Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code §2936. Therefore, if one party receives the note and another receives the deed of trust, the holder of the note prevails regardless of the order in which the interests were transferred. *Adler v. Sargent*, 109 Cal. 42, 49-50 (1895).

Debtor in Possession’s main contention asserted in the complaints related to 11155 Shadow Ct and 305 Hilton Drive is that the creditors currently holding the notes are not rightful owners of the properties. Debtor in Possession further argues that the foreclosures on both of the properties were wrongful. The law provides that the collateral or security always follows the note.

Thus, whoever holds the note has the rights over it and the collateral securing it. This is

discovery that Debtor in Possession could have conducted.

There being no plan being diligently prosecuted in this case, cause exists to dismiss the bankruptcy case. What Debtor has filed is not confirmable as it only provides for some possible future creditors whose future claims will be determined in the future.

The Debtor can pursue his litigation for the now two year old alleged foreclosures in the Superior Court or, if proper jurisdiction exists, in the District Court. But Debtor cannot use a non-confirmable plan to try and create federal jurisdiction pursuant to 28 U.S.C. § 1334.

Conclusion

The U.S. Trustee also cites to Debtor's prior multiple filings and dismissals of bankruptcy cases, cases not only filed personally but for related entities, and the failure to prosecute any of them to confirmation of a plan. Debtor in Possession responds, stating that because the court extended the automatic stay as provided in 11 U.S.C. § 362(c)(3)(B), Debtor's previous filings have already been addressed by the court.

However, in reading the Civil Minutes in granting that Motion, there is not a strong ruling that Debtor is filing and prosecuting as the Debtor in Possession this case in good faith. Given that the automatic stay is terminated only as to the Debtor under 11 U.S.C. § 362(c)(3)(A) and that the property rights remain protected by the automatic stay that applies to property of the bankruptcy estate, the extension of the stay as to the Debtor pursuant to 11 U.S.C. § 362(c)(3)(B) is of small consequence as to the property of the estate. Civil Minutes, Dckt. 30.

In deciding to extend the stay the court found that Debtor now having counsel substitute in, has sufficient rebutted the presumption of bad faith. But that is not a finding of "good faith" in prosecuting this case.

The court also addressed Debtor's "creative expenses" stated under penalty of perjury on Schedule J. *Id.*, at 4. These included having no property taxes to pay for the three properties, no maintenance and upkeep expenses for the three properties, having no clothing expense, and having no vehicle insurance expense for this two vehicles.

Debtor filed an Amended Schedule J on March 2, 2020. Dckt. 37. While now stating that he had property insurance and maintenance expenses of \$500 and \$50, respectively for his residence, he does not list any property tax expense for his residence. His food expense remains at \$2.83 per meal (in a thirty day month) and he states under penalty of perjury that he pays \$0.00 for clothing and laundry.

Other significant expenses still missing from Amended Schedule J are the insurance and the property taxes for the two real properties that Debtor asserts he owns and disputes the foreclosures. *Id.* at 28.

As discussed above, Debtor in Possession states in the September 2020 that no Self-Employment or Income Taxes have been paid in the first nine months of 2020. Dckt. 179 at 8. This is further confirmed on the Statement of Cash Flows included in the September 2020 Monthly Operating Report. *Id.* at 9.

On the Statement of Cash Flow Debtor in Possession lists automobile expense of \$2,549. On the bank statement attached for the Debtor in Possession account, it includes a payment of \$1,424.20 for an item described as “Honda Pmt 8002058235 B20246 2Lqqp2Nrv0Bjhl2 Herbert E Miller.” *Id.* at 11. It is not clear what “Honda payment” that the Debtor in Possession would be making outside of a confirmed Chapter 11 Plan and why there would be a \$1,424.20 “Honda payment.”

On the latest Amended Schedule A/B Debtor lists owing a 2017 Honda Accord. Dckt. 54 at 5. American Honda Finance Corporation has filed Proof of Claim No. 1-1 in the amount of \$19,089.98, for which the collateral is identified as a 2017 Honda Accord, with a monthly payment of \$562.46. Proof of Claim No. 1-1 and Attachment at 4,5. This is consistent with Amended Schedule D filed by Debtor. Dckt. 54 at 16.

The mystery is what \$1,424.00 payment would be made to “Honda” by the Debtor in Possession as part of his “business expense” in September 2020.

As discussed above, Debtor’s actual judicial fight is either in the Superior Court or the District Court to adjudicate the disputed foreclosures. However, Debtor in Possession has demonstrated that he cannot prosecute a confirmable Chapter 11 plan in this case.

Request to Impose Bar on Refiling

The U.S. Trustee also requests that the court impose a one-year bar on Debtor filing another bankruptcy case. This is based on the language of 11 U.S.C. § 349(a) providing that the dismissal of a case, unless otherwise ordered by the court, does not bar a discharge in a subsequent case. Further, the statute states that “[t]he dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.” 11 U.S.C. § 349(a).

The U.S. Trustee further directs the court to *In re Leavitt*, 209 B.R. 935, 942 (B.A.P. 9th Cir. 1997), to support the request that the court issue a one-year bar on Debtor filing a new case. Relying on several other bankruptcy court decisions, the Bankruptcy Appellate Panel concluded that based on the legislative history, 11 U.S.C. § 349(a) empowered the bankruptcy court to go beyond what is provided in 11 U.S.C. § 109(g) [willful failure of debtor to comply with order of the court] to impose whatever indefinite barring of a debtor filing a future case.

The court cannot identify what “order” of the court has not been complied with for purposes of imposing an 11 U.S.C. § 109(g) 180-day bar on filing a new case by Debtor.

The U.S. Trustee also cites to a 2009 decision from a bankruptcy judge in this District in which it is stated that 11 U.S.C. § 349(a) empowers a bankruptcy judge to issue a bar on filing future bankruptcy cases. *In re Van Ness*, 399 B.R. 897, 904-05 (Bankr. E.D. Cal. 2009). In *Sheparding* that decision, the court notes that its holding has not been cited to by any other court. Further, while that statement is made, it is *dicta* as the decision in *Van Ness* states that the provisions of 11 U.S.C. § 349(a) are inapplicable to that decision.

At the hearing **XXXXXX**

The court finds that there is cause to dismiss the case. The motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion To Dismiss filed by the United States Trustee, Tracy Hope Davis (“U.S. Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the case is dismissed.

IT IS FURTHER ORDERED **xxxxxxx**

8. [20-20175](#)-E-11 **HERBERT MILLER**
[20-2115](#) **Judson Henry**
MILLER V. JPMORGAN CHASE BANK,
N.A. ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
6-15-20 [1]

Plaintiff's Atty: Judson H. Henry

Defendant's Atty:

Unknown [JPMorgan Chase Bank, N.A.]

John C. Steele [MTC Financial, Inc.; Trustee Corps]

Ofunne Edoziem [Caliber Home Loans, Inc.; U.S. Bank Trust, N.A.]

Adv. Filed: 6/15/20

Answer: none

Nature of Action:

Recovery of money/property - turnover of property

Validity, priority or extent of lien or other interest in property

Declaratory judgment

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 9/23/20 to be conducted in conjunction with the Motion to Dismiss the Complaint in this Adversary Proceeding.

Stipulation to Set Aside Entry of Default filed 9/30/20 [Dckt 51]; Order granting filed 10/2/20 [Dckt 55]

Order on *Ex Parte* Application for Order Authorizing Deposit by Plaintiff in the Court's Registry filed 10/2/20 [Dckt 54]

The Status Conference is continued to 10:30 a.m. on October 29, 2020.
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9. [20-20175-E-11](#) **HERBERT MILLER**
[20-2115](#) **Judson Henry**

**CONTINUED MOTION TO DISMISS
ADVERSARY PROCEEDING/NOTICE
OF REMOVAL
7-16-20 [12]**

**MILLER V. JPMORGAN CHASE BANK,
N.A. ET AL**

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor's Attorney on September 17, 2020. By the court's calculation, **xx** days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The hearing on the Motion to Dismiss Adversary Proceeding is continued to 10:30 a.m. on October 29, 2020.</p>

10. [20-20175-E-11](#) **HERBERT MILLER**
[AP-1](#) **Judson Henry**
WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-21-20 [98]

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors and Office of the United States Trustee on July 21, 2020. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The hearing on the Motion for Relief from the Automatic Stay is continued to 10:30 a.m. on October 29, 2020.</p>
--

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Adequate Protection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The hearing on the Motion for Adequate Protection is continued to 10:30 a.m. on October 29, 2020.</p>

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Adequate Protection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The hearing on the Motion for Adequate Protection is continued to 10:30 a.m. on October 29, 2020.</p>

FINAL RULINGS

13. [19-24893-E-7](#) **RHIANNON NICHOLS** **MOTION TO REDEEM**
[PGM-2](#) **Peter Macaluso** **9-16-20 [125]**

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 16, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Redeem has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Redeem is granted.

Rhiannon Winnoma Nichols ("Debtor") seeks to redeem a 2012 Hyundai Sonata ("Property") from the claim of CarFinance Capital, LLC ("Creditor") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Rhiannon Winnoma Nichols. Debtor seeks

to value the Property at a replacement value of \$3,947.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the Property's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien perfected on the Property secures Creditor's claim with a balance of approximately \$16,137.10. Therefore, Creditor's claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor's secured claim to be in the amount of \$3,947.00.

Debtor has claimed an exemption in the amount of \$1.00 in the Property pursuant to 11 U.S.C. § 522. Because Debtor claims an exemption in the Property, Debtor is permitted to redeem the Property by paying Creditor \$3,947.00 at the time of redemption, which payment is in full satisfaction of the secured claim.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.

The court shall issue an order in substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Redeem filed by Rhiannon Winnoma Nichols ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2012 Hyundai Sonata ("Property") by paying CarFinance Capital, LLC, the creditor holding the claim secured by the Property, the total amount of \$3,947.00, in full at the time of redemption, which must be paid on or before November 14, 2020.

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2020. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion for Protective Order has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Protective Order is dismissed without prejudice.

NOTICE OF GLOBAL SETTLEMENT & JOINT STATUS REPORT

The court greatly appreciates the parties detailed status report as to their efforts to settle the pending issues. The court summarizes the joint status report as follows (the full status report is stated in the Notice of Global Settlement and Joint Status Report, Dckt. 160):

- A. Following a 9-hour second mediation session, the parties entered into a global settlement agreement that if approved by the court would resolve all disputes.
- B. Trustee anticipates the approval motion and a motion for dismissal of the parent bankruptcy case which will be set for hearing on the Court's November 12, 2020 law and motion calendar.
- C. The parties have agreed and suggest that either: (1) all six pending motions (HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6) be dismissed without prejudice at this time or (2) HLG-1 and HLG-4 be continued to December 10, 2020.

Based on the Stipulation of Alan Fukushima, the Chapter 7 Trustee, Inderbir Singh, and Nanak Bhatti (Dckt. 160) the court dismisses without prejudice the following Contested Matters:

HLG-1: Motion for Protective Order filed by Inderbir Singh and Related Persons

HLG-2: Inderbir Singh's Objection to Proof of Claim No. 3-1 filed by Nanak Bhatti

HLG-3: Inderbir Singh's Objection to Proof of Claim No. 1-1 filed by Nanak Bhatti

HLG-4: Conditional Motion for Abstention and Relief From the Automatic Stay

HLG-5: Motion to Quash Subpoena Issued on Wells Fargo Bank and for Protective Order filed by Inderbir Singh and Related Persons

and

HLG-6: Motion for Protective Order Regarding Document Production Requests Issued on Inderbir Singh.

The court shall issue orders substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the October 15, 2020 hearing.

The Motion for Protective Order filed by Inderbir Singh and Related Parties having been presented to the court, a Stipulation for Dismissal having been filed (Dckt. 160) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Protective Order is dismissed without prejudice.

15. [20-20507-E-7](#)
[HLG-2](#)

SONIC EXPRESS, LLC
Gary Zilaff

STATUS CONFERENCE RE:
OBJECTION TO CLAIM OF NANAK
BHATTI, CLAIM NUMBER 3
8-21-20 [\[76\]](#)

Final Ruling: No appearance at the October 15, 2020 Status Conference is required.

Debtor's Atty: Gary F. Zilaff

Notes:

Set by order of the court filed 9/28/20 [Dckt 154]. To be heard in conjunction with other matters on calendar.

[HLG-1, HLG-4] Stipulation to Continue Hearings from 10/15/20 to 10/29/20, at 10:30 a.m. filed 9/25/20 [Dckt 148]; Order granting filed 10/2/20 [Dckt 159]

[HLG-2, HLG-3, HLG-5, HLG-6] Stipulation to Continue Hearings from 10/15/20 to 12/10/20, at 10:30 a.m. filed 9/25/20 [Dckt 148]; Order granting filed 10/2/20 [Dckt 159]

<p>The Status Conference is concluded and removed from the Calendar, the Objection to Claim having been dismissed.</p>

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(3) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2020. By the court's calculation, 17 days' notice was provided. The court set the hearing for October 15, 2020. Dckt. 153.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<p>The Order to Show Cause is discharged.</p>
--

NOTICE OF GLOBAL SETTLEMENT & JOINT STATUS REPORT

The court greatly appreciates the parties detailed status report as to their efforts to settle the pending issues. The court summarizes the joint status report as follows (the full status report is stated in the Notice of Global Settlement and Joint Status Report, Dckt. 160):

- A. Following a 9-hour second mediation session, the parties entered into a global settlement agreement that if approved by the court would resolve all disputes.
- B. Trustee anticipates the approval motion and a motion for dismissal of the parent bankruptcy case which will be set for hearing on the Court's November 12, 2020 law and motion calendar.
- C. The parties have agreed and suggest that either: (1) all six pending motions (HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6) be dismissed without prejudice at this time or (2) HLG-1 and HLG-4 be continued to December 10, 2020.

Based on the update provided, the court dismisses HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6. Moreover the court will discharge the Order to Show Cause for HLG-2 (Dckt. 152) and the Orders to Show Cause for HLG-3 (Dckt. 149).

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes

for the hearing.

The Order to Show Cause issued by the court having been addressed by the Stipulation of the Parties (Dckt. 160), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged.

17. [20-20507-E-7](#) **SONIC EXPRESS, LLC** **OBJECTION TO CLAIM OF NANAK**
[HLC-2](#) **Gary Zilaff** **BHATTI, CLAIM NUMBER 3**
8-21-20 [[76](#)]

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2020. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Objection to Proof of Claim No. 3-1 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim No. 3-1 is dismissed without prejudice.

NOTICE OF GLOBAL SETTLEMENT & JOINT STATUS REPORT

The court greatly appreciates the parties detailed status report as to their efforts to settle the pending issues. The court summarizes the joint status report as follows (the full status report is stated in the Notice of Global Settlement and Joint Status Report, Dckt. 160):

- A. Following a 9-hour second mediation session, the parties entered into a global settlement agreement that if approved by the court would resolve all disputes.
- B. Trustee anticipates the approval motion and a motion for dismissal of the parent bankruptcy case which will be set for hearing on the Court's November 12, 2020

law and motion calendar.

- C. The parties have agreed and suggest that either: (1) all six pending motions (HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6) be dismissed without prejudice at this time or (2) HLG-1 and HLG-4 be continued to December 10, 2020.

Based on the Stipulation of Alan Fukushima, the Chapter 7 Trustee, Inderbir Singh, and Nanak Bhatti (Dckt. 160) the court dismisses without prejudice the following Contested Matters:

HLG-1: Motion for Protective Order filed by Inderbir Singh and Related Persons

HLG-2: Inderbir Singh's Objection to Proof of Claim No. 3-1 filed by Nanak Bhatti

HLG-3: Inderbir Singh's Objection to Proof of Claim No. 1-1 filed by Nanak Bhatti

HLG-4: Conditional Motion for Abstention and Relief From the Automatic Stay

HLG-5: Motion to Quash Subpoena Issued on Wells Fargo Bank and for Protective Order filed by Inderbir Singh and Related Persons

and

HLG-6: Motion for Protective Order Regarding Document Production Requests Issued on Inderbir Singh.

The court shall issue orders substantially in the following form holding that:-1

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the October 15, 2020 hearing.

The Objection to Proof of Claim No. 3-1 filed by Inderbir Singh having been presented to the court, the Parties having Stipulated to its dismissal (Dckt. 160) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim No. 3-1 is dismissed without prejudice.

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2020. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Objection to Proof of Claim No. 1-1 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Objection to Proof of Claim No. 1-1 is dismissed without prejudice.</p>

NOTICE OF GLOBAL SETTLEMENT & JOINT STATUS REPORT

The court greatly appreciates the parties detailed status report as to their efforts to settle the pending issues. The court summarizes the joint status report as follows (the full status report is stated in the Notice of Global Settlement and Joint Status Report, Dckt. 160):

- A. Following a 9-hour second mediation session, the parties entered into a global settlement agreement that if approved by the court would resolve all disputes.
- B. Trustee anticipates the approval motion and a motion for dismissal of the parent bankruptcy case which will be set for hearing on the Court's November 12, 2020 law and motion calendar.
- C. The parties have agreed and suggest that either: (1) all six pending motions (HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6) be dismissed without prejudice at this time or (2) HLG-1 and HLG-4 be continued to December 10, 2020.

Based on the Stipulation of Alan Fukushima, the Chapter 7 Trustee, Inderbir Singh, and Nanak Bhatti (Dckt. 160) the court dismisses without prejudice the following Contested Matters:

HLG-1: Motion for Protective Order filed by Inderbir Singh and Related Persons

HLG-2: Inderbir Singh's Objection to Proof of Claim No. 3-1 filed by Nanak Bhatti

HLG-3: Inderbir Singh's Objection to Proof of Claim No. 1-1 filed by Nanak Bhatti

HLG-4: Conditional Motion for Abstention and Relief From the Automatic Stay

HLG-5: Motion to Quash Subpoena Issued on Wells Fargo Bank and for Protective Order filed by Inderbir Singh and Related Persons

and

HLG-6: Motion for Protective Order Regarding Document Production Requests Issued on Inderbir Singh.

The court shall issue orders substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the October 15, 2020 hearing.

The Objection to Proof of Claim No. 1-1 filed by Indrbir Singh having been presented to the court, the Parties having Stipulated to its dismissal (Dckt. 160) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim No. 1-1 is dismissed without prejudice.

19. [20-20507](#)-E-7
[HLG-3](#)

SONIC EXPRESS, LLC
Gary Zilaff

STATUS CONFERENCE RE:
OBJECTION TO CLAIM OF NANAK
BHATTI, CLAIM NUMBER 1
8-21-20 [\[84\]](#)

Final Ruling: No appearance at the October 15, 2020 Status Conference is required.

Debtor's Atty: Gary F. Zilaff

Notes:

Set by order of the court filed 9/28/20 [Dckt 154]. To be heard in conjunction with other matters on calendar.

[HLG-1, HLG-4] Stipulation to Continue Hearings from 10/15/20 to 10/29/20, at 10:30 a.m. filed 9/25/20 [Dckt 148]; Order granting filed 10/2/20 [Dckt 159]

[HLG-2, HLG-3, HLG-5, HLG-6] Stipulation to Continue Hearings from 10/15/20 to 12/10/20, at 10:30 a.m. filed 9/25/20 [Dckt 148]; Order granting filed 10/2/20 [Dckt 159]

<p>The Status Conference is concluded and removed from the Calendar, the Objection to Claim having been dismissed.</p>

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(3) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2020. By the court's calculation, 17 days' notice was provided. The court set the hearing for October 15, 2020. Dckt. 151.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<p>The Order to Show Cause is discharged.</p>
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NOTICE OF GLOBAL SETTLEMENT & JOINT STATUS REPORT

The court greatly appreciates the parties detailed status report as to their efforts to settle the pending issues. The court summarizes the joint status report as follows (the full status report is stated in the Notice of Global Settlement and Joint Status Report, Dckt. 160):

- A. Following a 9-hour second mediation session, the parties entered into a global settlement agreement that if approved by the court would resolve all disputes.
- B. Trustee anticipates the approval motion and a motion for dismissal of the parent bankruptcy case which will be set for hearing on the Court's November 12, 2020 law and motion calendar.
- C. The parties have agreed and suggest that either: (1) all six pending motions (HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6) be dismissed without prejudice at this time or (2) HLG-1 and HLG-4 be continued to December 10, 2020.

Based on the update provided, the court dismisses HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6. Moreover the court will discharge the Order to Show Cause for HLG-2 (Dckt. 152) and the Orders to Show Cause for HLG-3 (Dckt. 149).

The court shall issue orders substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the October 15, 2020 hearing.

The Order to Show Cause issued by the Court having been addressed by the Parties in the Stipulation (Dckt. 160), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged.

21.	<u>20-20507-E-7</u> <u>HLG-4</u>	SONIC EXPRESS, LLC Gary Zilaff	STATUS CONFERENCE RE: MOTION FOR ABSTENTION AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY 8-21-20 [87]
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Final Ruling: No appearance at the October 15, 2020 Status Conference is required.

Debtor's Atty: Gary F. Zilaff

Notes:

Set by order of the court filed 9/28/20 [Dckt 154]. To be heard in conjunction with other matters on calendar.

[HLG-1, HLG-4] Stipulation to Continue Hearings from 10/15/20 to 10/29/20, at 10:30 a.m. filed 9/25/20 [Dckt 148]; Order granting filed 10/2/20 [Dckt 159]

[HLG-2, HLG-3, HLG-5, HLG-6] Stipulation to Continue Hearings from 10/15/20 to 12/10/20, at 10:30 a.m. filed 9/25/20 [Dckt 148]; Order granting filed 10/2/20 [Dckt 159]

The Status Conference is concluded and removed from the Calendar, the Motion having been dismissed.

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion— No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2020. By the court’s calculation, 55 days’ notice was provided. 28 days’ notice is required.

The Motion for Abstention and Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Abstention and Relief from the Automatic Stay is dismissed without prejudice.

NOTICE OF GLOBAL SETTLEMENT & JOINT STATUS REPORT

The court greatly appreciates the parties detailed status report as to their efforts to settle the pending issues. The court summarizes the joint status report as follows (the full status report is stated in the Notice of Global Settlement and Joint Status Report, Dkt. 160):

- A. Following a 9-hour second mediation session, the parties entered into a global settlement agreement that if approved by the court would resolve all disputes.
- B. Trustee anticipates the approval motion and a motion for dismissal of the parent bankruptcy case which will be set for hearing on the Court’s November 12, 2020 law and motion calendar.
- C. The parties have agreed and suggest that either: (1) all six pending motions (HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6) be dismissed without prejudice at this time or (2) HLG-1 and HLG-4 be continued to December 10, 2020.

Based on the Stipulation of Alan Fukushima, the Chapter 7 Trustee, Inderbir Singh, and Nanak Bhatti (Dckt. 160) the court dismisses without prejudice the following Contested Matters:

HLG-1: Motion for Protective Order filed by Inderbir Singh and Related Persons

HLG-2: Inderbir Singh's Objection to Proof of Claim No. 3-1 filed by Nanak Bhatti

HLG-3: Inderbir Singh's Objection to Proof of Claim No. 1-1 filed by Nanak Bhatti

HLG-4: Conditional Motion for Abstention and Relief From the Automatic Stay

HLG-5: Motion to Quash Subpoena Issued on Wells Fargo Bank and for Protective Order filed by Inderbir Singh and Related Persons

and

HLG-6: Motion for Protective Order Regarding Document Production Requests Issued on Inderbir Singh.

The court shall issue orders substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the October 15, 2020 hearing.

The Motion for Abstention and Relief from the Automatic Stay filed by Inderbir Singh having been presented to the court, the Stipulation to dismiss filed by the Parties (Dckt. 160), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Abstention and Relief from the Automatic Stay is dismissed without prejudice.

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion— No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Quash Subpoena Issued on Wells Fargo Bank and For Protective Order has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Quash Subpoena Issued on Wells Fargo Bank and For Protective Order is dismissed without prejudice.

NOTICE OF GLOBAL SETTLEMENT & JOINT STATUS REPORT

The court greatly appreciates the parties detailed status report as to their efforts to settle the pending issues. The court summarizes the joint status report as follows (the full status report is stated in the Notice of Global Settlement and Joint Status Report, Dckt. 160):

- A. Following a 9-hour second mediation session, the parties entered into a global settlement agreement that if approved by the court would resolve all disputes.
- B. Trustee anticipates the approval motion and a motion for dismissal of the parent bankruptcy case which will be set for hearing on the Court's November 12, 2020 law and motion calendar.
- C. The parties have agreed and suggest that either: (1) all six pending motions (HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6) be dismissed without prejudice at this time or (2) HLG-1 and HLG-4 be continued to December 10, 2020.

Based on the Stipulation of Alan Fukushima, the Chapter 7 Trustee, Inderbir Singh, and Nanak Bhatti (Dckt. 160) the court dismisses without prejudice the following Contested Matters:

HLG-1: Motion for Protective Order filed by Inderbir Singh and Related Persons

HLG-2: Inderbir Singh's Objection to Proof of Claim No. 3-1 filed by Nanak Bhatti

HLG-3: Inderbir Singh's Objection to Proof of Claim No. 1-1 filed by Nanak Bhatti

HLG-4: Conditional Motion for Abstention and Relief From the Automatic Stay

HLG-5: Motion to Quash Subpoena Issued on Wells Fargo Bank and for Protective Order filed by Inderbir Singh and Related Persons

and

HLG-6: Motion for Protective Order Regarding Document Production Requests Issued on Inderbir Singh.

The court shall issue orders substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the October 15, 2020 hearing.

The Motion to Quash Subpoena Issued on Wells Fargo Bank and For Protective Order filed by Inderbir Singh and Related Persons having been presented to the court, the Stipulation to dismiss filed by the Parties (Dckt. 160) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, and parties requesting special notice on September 17, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Protective Order has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Protective Order is dismissed without prejudice.

NOTICE OF GLOBAL SETTLEMENT & JOINT STATUS REPORT

The court greatly appreciates the parties detailed status report as to their efforts to settle the pending issues. The court summarizes the joint status report as follows (the full status report is stated in the Notice of Global Settlement and Joint Status Report, Dckt. 160):

- A. Following a 9-hour second mediation session, the parties entered into a global settlement agreement that if approved by the court would resolve all disputes.
- B. Trustee anticipates the approval motion and a motion for dismissal of the parent bankruptcy case which will be set for hearing on the Court's November 12, 2020 law and motion calendar.
- C. The parties have agreed and suggest that either: (1) all six pending motions (HLG-1, HLG-2, HLG-3, HLG-4, HLG-5, and HLG-6) be dismissed without prejudice at this time or (2) HLG-1 and HLG-4 be continued to December 10, 2020.

Based on the Stipulation of Alan Fukushima, the Chapter 7 Trustee, Inderbir Singh, and Nanak Bhatti (Dckt. 160) the court dismisses without prejudice the following Contested Matters:

HLG-1: Motion for Protective Order filed by Inderbir Singh and Related Persons

HLG-2: Inderbir Singh's Objection to Proof of Claim No. 3-1 filed by Nanak Bhatti

HLG-3: Inderbir Singh's Objection to Proof of Claim No. 1-1 filed by Nanak Bhatti

HLG-4: Conditional Motion for Abstention and Relief From the Automatic Stay

HLG-5: Motion to Quash Subpoena Issued on Wells Fargo Bank and for Protective Order filed by Inderbir Singh and Related Persons

and

HLG-6: Motion for Protective Order Regarding Document Production Requests Issued on Inderbir Singh.

The court shall issue orders substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the October 15, 2020 hearing.

The Motion for Protective Order Regarding Document Production Requests Issued on Inderbir Singh having been presented to the court, the Parties having Stipulated to dismissal of the Motion (Dckt. 160), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

25.	<u>20-20507</u> -E-7 <u>HLG-7</u>	SONIC EXPRESS, LLC Gary Zilaff	MOTION TO QUASH 9-17-20 [<u>131</u>]
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WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Gurtej Gill, Rapid Trucking, Rapid Logistics, LLC, and Essar Logistics, LLC ("Movants") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Quash has been dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Substitute has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Substitute is granted.</p>
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Joseph H. Akins Jr., in his capacity as the representative of Joseph H. Akins Sr. ("Representative"), seeks an order approving the motion to substitute for the deceased Debtor, Joseph H. Akins Sr. This motion is being filed pursuant to Federal Rules of Bankruptcy Procedure 1016 and 7025.

Debtor filed for relief under Chapter 7 on August 9, 2018. On January 1, 2020, Debtor Joseph H. Akins Sr. passed away. Representative asserts that he is the lawful representative of the estate of the Debtor. There has been no distribution from the estate of the late Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Representative requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Suggestion of Death was filed on June 23, 2020. Dckt. 47. Representative is the son of the deceased party and is the successor's heir and lawful representative. Representative states that he will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides, "Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or

incompetency had not occurred.”

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004

(emphasis added); *see also Hawkins v. Eads, supra*.

Here, Joseph H. Akins Jr. has provided sufficient evidence to show that a substitution of a representative of the late Debtor is necessary and proper for the continued prosecution of the late Debtor's rights and interests for the benefit of his successors in interest. The court grants the Motion to Substitute Party.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Substitute After Death filed by Joseph H. Akins Jr., in his capacity as the representative of Joseph H. Akins Sr. ("Representative") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Joseph H. Akins Jr. is substituted as the representative for the late Joseph H. Akins, Sr., for all of the late Debtor's rights and interests in this case.

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Order to Grant the Amended Stipulation for the Abandonment of Specific Personal Property is granted.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion for Order to Grant the Amended Stipulation for the Abandonment of Specific Personal Property filed by Joseph H. Akins Jr., in his capacity as the representative of the estate of Joseph H. Akins Sr., requests that the court approve a stipulation between Debtor and Chapter 7 Trustee authorizing Trustee to abandon property commonly known as:

1. 2005 GMC Pickup,
2. 2000 Buick,
3. 1990 GMC Pickup,
4. 1966 Chevy Pickup, and
5. 1974 Mirrocraft aluminum boat ("Property").

Dckt. 60. The Stipulation values the Property at \$6,600.00. *Id.* The Declaration of Joseph H. Akins Jr. has

been filed in support of the Motion. Dckt. 72.

The court finds that there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Order to Grant the Amended Stipulation for the Abandonment of Specific Personal Property filed by Joseph H. Akins Jr. (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Order to Grant the Amended Stipulation for the Abandonment of Specific Personal Property is granted, and as stipulated the Property identified as:

1. 2005 GMC Pickup,
2. 2000 Buick,
3. 1990 GMC Pickup,
4. 1966 Chevy Pickup, and
5. 1974 Mirrocraft aluminum boat (“Property”)

is abandoned to Joseph H. Akins Jr., the by this order, with no further act of the Chapter 7 Trustee required.

Final Ruling: No appearance at the October 15, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice on September 1, 2020. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Stipulation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion is granted and the Bankruptcy Case is dismissed.</p>

The United States Trustee, Tracy Hope Davis ("U.S. Trustee") requests that the court approve a stipulation with Noreen Grace Pacete Guzman ("Debtor") which provides that the Chapter 7 case will be dismissed without entry of discharge.

STIPULATION

U.S. Trustee and Debtor stipulate to an order to dismiss the Chapter 7 case without entry of discharge subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 20):

- A. U.S. Trustee is prepared to file a motion to dismiss case for abuse pursuant to 11 U.S.C. §§ 707(b)(1), 707(b)(2) and/or 707(b)(3).
- B. Debtor desires to voluntarily dismiss this chapter 7 case prior to entry of discharge.
- C. Parties stipulate to the dismissal of the case prior to entry of discharge.
- D. U.S. Trustee will file a motion to approve the Parties stipulation with the

court upon appropriate notice.

DISCUSSION

Here, parties stipulate to dismissal of this chapter 7 case prior to entry of discharge in this matter. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 14 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on the U.S. Trustee's Statement of Presumed Abuse filed on August 3, 2020 and Debtor does not wish to defend the U.S. Trustee's allegations.

Counsel, Debtor, and Trustee have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Debtor to move on.

The Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Stipulation filed by the United States Trustee, Tracy Hope Davis ("U.S. Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and this bankruptcy case is dismissed.